Mercurius Britanicus

His Spectacles, sent to Iudge *Jenkins* to peruse his Recantation, (with some queries taken out of his Confession,) In vindication of the *Parliament* of

ENGLAND.

AND is this the reward of the *Alchimists* Cost and study? And must it needs be the *Philosopher Stone*? such sparkles will sooner make a brasen face then a Golden Age; I will make good what I say. Make way in the Court there; Let *Britanicus* come in: *David* is no *Iudge* here, But a Prisoner at the *Barre*. Come *David*, ap *Ienkin*, ap *Iudge*, ap *Malignant*, ap *Prisoner*, hold up thy hand: Thou art Indicted for high Treason, for adhearing to the forces raised against the Parliament; what canst thou say for thy selfe? art thou guilty or not Guilty?

And why not indure a Triall? Look to him Jayler: But what are the reasons that Mr. *Jenkins* will not submit, let us examine them, least others be seduced to follow this evill example of casting away themselves.

1. He saith, *That the houses have not power, because the house of Commons declared the King at this time not to be in a condition to governe, from whom they should have a vertue to govern.* But (under favour) let me tell him, that where ever the Kings Person is, or in what condition soever, yet the Royall Power is in the Parliament; 1. *Radically*, and *Vertually*, as in the first subject (they being the representative bodie of the whole Kingdome) 2. *Collativè vel Communicativè*, by way of free donation. 3. *Limitatè* The Power being so conferred upon the King, that *salus populi*, the safety of the people be preserved; *Indges 9.c.* 1 *Sam.* 11.15.2 *Kings* 10.5. 1 *Chron*, 12. 38. *Barclaius l.3. Cont. Monarchomach l.3.c.3. Lavater Serrarius, Cornelius alapide.*

2. That to declare the King not to be in a condition to governe is Contrary to the oath which the Members take, That his Majesty is the only and supreame Governour over all persons in all Causes.

The oath taken by the Members acknowledgeth a politique power in the King [governing according to his Oath at the Coronation] for the safety of the people: But not giving away that naturall power, which is retained in the Parliament, which they are bound to conserve. The Parliament are as essentiall Judges as the King; They have more then the King, which is, the Regall power by which they are called together, The representative power by which they are chosen, and their owne power as parts and speciall Members of the people, which power remaines with them in what condition soever the King is. *Barela-*

jus

jus Lex Rex pag. 60. Althusius polit. c. 1. n. 13. Marius Salomoninus de princ. c. 2.

3. Mr. *Ienkins* saith that this said Oath, and the said Declaration [viz. To the Scots Papers Nov. 28. pag. 8.] *are both in the present Tence sworne, and declared, at one and the same time;* But truly he hath been a very weak Lawyer to be Judge so long as he hath been, if he cannot distinguish a King betwixt *jus Personæ*, and *jus Coronæ*, the power of the person, and the power of the Crowne, and Royall Office. For, to sweare an acknowledgement, That the King by the power of his Crowne and Royall Office which is virtually, both in the Parliament, and in all other his inferior Courts] is the only and supreame Governour present there over all Persons in all Causes; and to declare that the Person of the King is not in a capacity to Governe, when the man that is the King is so, is no contradiction at all, nor any lessoning of the Authority of the Parliament, but a manifestation of that just Power by which they Act. As a Woman that shall obey the Kings officiall power, in giving faith to her Husband [according to the Lawes of the Land] to give her body only to him, and yet shall oppose the Man that is a King, in case he shall offer to Ravish her: The like also in case the King be a Child, and desire things unmeet, or a mad man and seek to kill himselfe, or his subjects. *Arnisæus 16. Laertius 3. in Plato. Covarruvias Pract. quest. c. 1. Kasquez. Illustr. quest. l. 1. c. 4. num. 2. Lex Rex fol. 267. Acts 4. 19. Acts 5. 29 Chrysostom on Rom. 13.*

4. He sayes that *the two Houses are the only supreame Governours in default of the King, for that he hath left his great Councell*, and yet would blame them for *not suffering him to come upon his desire, as if this were Contrary to their Oath.* This *Iudge* is a Reverend *Machivilian.* But to answer him, In this (I say) they do nothing against the royal Office of the *King*; Whilst both Houses restrain the *Kings private Will*, as a *Man*, they act

for him as a *King* and obey his *publique Legall will, de jure*. And whileſt he is abſent from his *Parliament* as a *man*, he is legally and in his *Law-power* preſent, and ſo the Parliament have his Supream power as *Legally* as if he were *perſonally* there with them; And they are preparing Propoſitions (which are almoſt ready) for the ſafety of the people, to be made *Acts* by him. Mr. *Knox* Hiſt. of *Scotland* l. 2. page. 141. *Winzetus verſitat. adver. Grotius. de jure belli & pacis.* l. 1. c. 4. n. 7 Barclay adver. Monarchom l. 3. c. 8.

5. He ſayes that the *Parliament have uſed the Kegis name only, but have not his Government.* But by his leave they act by his power, (as is ſhewed already) But *Illud tantum poſſumus, quod jure poſſumus.* And therefore as power to govern juſtly is irrevocably committed by the 3. Eſtates (who made the King) to the King, ſo is that ſame power committed by the Sheriffes Cityes and Corporations to their *Members*, to decree in *Parliament* what is juſt and good irrevocably; And if we regard the derived and executative power in Parliamentary *Acts*, they make a totall and compleate *Soveraign-power*, *Althuſius Politic.* c. 25. n. 9. Lex: Rex. pag 377. Halicarnaſſ: l. 4. Antiq. Rom. Angelo. Pol. l. 3. c. 3 *Barclaius contrà Monarch* l. 4. c. 10. p. 268.

6. He would make the world beleive that *the Royall Power is not vertually in the Houſes becauſe they ſend the Propoſitions to be ſigned by the King.* They deſire the *King* to ſigne them *ex decentia*, of decency and conveniency for his place, (as a City doth ſupplicate a Lord *Major*. But they ſupplicate not *ex debito*, of obligation as beggars ſeek almes: then ſhould they be ciphers, They ſend them to the King becauſe he is obliged by his office to paſſe ſuch Acts as they ſhall preſent to him, which he is bound to paſſe, by an act of *Royall* debt pſal: 72. 13. *Lex Rex.* pag. 210 *Cornelius Bertramon* c. 12. *Iunius Brutus vindic. contra Tyran.* S 2. *Author Libelli de jure magiſtrat. in ſubd. q. 6.*

Althuſ.

Althus. Politic. c. 18. Buchanan de jure Regni apud Scotos.

7. He saith that *to affirme that the Kings power is separable from his person is High-Treason.* And give some Examples of the *Spencers* and others, which are quite from our case and very much different; We exclude not the person of the King, yet wee distinguish (with leave of the Judge) betwixt the persons in *linea Physica* (we must take *physica* largely heere,) and in *linea morali*, obedience, fear, tribute honour is due to the person of the King & to the man who is the King, not because of his person, or because he is a man (Mr. *Jenkins* may know in what notion, wee take the named person) but because God by the peoples election, hath exalted him to a Royall Dignity, and for this cause ill doers are to subject their Throates and Necks to the sword of the Kings *Executioner*, or *Hang-man*: But if a *King* seeke to destroy his Subjects contrary to the *Law* of God, and the Lawes of the Kingdome, whom [by his *Oath* he is bound to preserve] in such a case there is the Royall power in the *Parliament*, to preserve the people and bring those delinquents to tryall which put him upon such dangers. *Acts* 4. 19. *Rom.* 13. 1. *Grot. de jure belli, & pacis*, l. 1. c. 4. n 7. *Winzetus velitat. adver. Buchanan. Barclay adv. Monarchom.* l. 3. c. 8.

8. He Inlargeth himselfe upon his 6. argument *concerning the Kings passing of Acts* But let the Judge tell me where there was ever any judiciall *Act* without the *Parliament* or that the *King* had ever a negative voyce in *Parliament*.

9 He saith, *That the whole and sole power of pardoning* Treasons, and Fellonies, *belongs to the* King; *And he saith that there was never more cause to have sufficient pardons, then in such troublesome times as these.* But [under favour] Though Kings may do something of *grace* where there is signe of grace, yet not of *meere grace* alone, because, what Kings doe, as Kings, and by vertue

vertue of their Royall office, that they do *ex debito officij*, by debt, and right of their office and that they can not in conscience but do, it not being arbitrary to them to doe the dutifull acts of their office. But what they doe of *meere grace*, that they doe as mercifull men. Some *Kings* have given four pardons to one man for severall murders though no shew of Repentance, of grace in the malefactor. But did not the blood of the three lay upon that *Kings* Conscience, to dispute with blood, *Numb.* 35. 31. *Gen* 9. 6. *Rom* 13: 4, *Prov* 17. 15. *Deut*: 1. 17. 2 *Chron* 19. 6. *Illud potest Rex, & illud tantum quod jure potest Lex Rex*: The words are thus: *From this it is that deluded councellors made King* Iames [a man not of shallow understanding] and *King* Charles *to give pardons to such bloody murderers, as* Iames a Grant. *And the pardoning of the* condemned popish priests at New-gate was much contested about by the Parliement. To what effect was the Arch-Bishop of *Canterburyes* Pardon?

re, Lastly he layes down An Argumen[e], such a one, as is more positively for the Authority of the *Parliament*, then all that ever he said before had any shew of lessoning their *power Queene Elizabeth* [saith he] summoned her first Parliament, to be held the 23: of Ian. in the first yeare of her Majesties Reign. The *Lords* and *Comusons*, Assembled the 25 of the same Month of *Ian*: [and did not sit before, what ever he pretendes. The Acts of that Parliament beare date Ian: 25 that day they sate; not when they were summoned, and being so concluded by the two houses the queene sent to the Reverend Iudges for their opinions; *And it was resolved by all the Iudges of* England, that *the* parliament *began not the* 23 of Ianuary *but* Ian: the 25 [notwithstanding her Majesties former summons.] As appears 3: *Elizab*: *Dier*; 203: The Iudge you see argues very finely doth he not indeed the man [very likely] begins to dote in his old Age.

And this we well know, that all Acts of Parliament, beare da e not

[not from the time of the Coronation of the present King in whose Raigne they are made, but]from the time of each Parliaments first sitting.

See how he concludes, He saith thus.

I *Should hold it a great honour to die for the honourable and holy Lawes of the Land: That which will save this Land from d ſtruction is an Act of oblivion and his Majesties gracious generall pardon; the Souldiers their Arrears, and every man his owne, and truth and peace, establiſhed in the Land, and a favourable regard had to the ſatisfaction of Tender conſciences.*

Subscribed

David Jenkins.

Vpon this Conclusion I shall lay downe a few Queries which I obſerv'd in the reading thereof.

1. What Judge *Ienkins* meanes by Holy Lawes, for he doth not say the Lawes of the Land but the Holy Lawes, nor can he so properly call the Scripture the Lawes of *England*, for those are the *Lawes* of the whole Christian world, whether therefore he meanes not the holy *canon Lawes* of the *Bishops*[for so those are called by the Cavaliers,]or perhaps the Lawes of *Rome* given to be observed by the Papists in *England*, for whom he hath done eminent service.

2. What he meanes by dying in *Honour*, whether he expects to be Canonized at *Rome* for his good service?

3 Whether his opinion for an Act of oblivion, be not directly contrary to what he layd downe in his ninth Argument?

4. Whether all that which followes concerning Souldiers Arrears, tender consciences, and the rest be not published by him, purpoesly to foment divisions amongst us, and raise and increase differences?

FINIS.